

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RONALD L. WOOTEN,

Petitioner,

v.

**CASE NO. 2:07-cv-00081
JUDGE MARBLEY
MAGISTRATE JUDGE KING**

TIMOTHY BRUNSMAN,

Respondent.

OPINION AND ORDER

On February 14, 2007, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed as barred by the one-year statute of limitations under 28 U.S.C. §2244(d). Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*.

Petitioner complains that the Court *sua sponte* raised the issue of statute of limitations; however, a District Court is permitted, but not obligated, to *sua sponte* address the timeliness of a federal habeas corpus petition. *Day v. McDonough*, 126 S.Ct. 1675, 1684 (2006). Petitioner additionally contends that the instant §2254 petition is timely because he had pending in the state courts, from June 22, 2006, until December 27, 2006, a state habeas corpus petition. This argument is not persuasive. As noted by the Magistrate Judge, the statute of limitations expired, at the latest, in December 2000, long before petitioner filed his state habeas corpus petition. "The tolling provision does not... 'revive' the limitations period (*i.e.*, restart the clock at zero); it can only serve to pause a clock that has not yet fully run." *Vroman v. Brigano*, 346 F.3d 598, 601 (6th Cir. 2003), citing *Rashid v. Khulmann*, 991 F.Supp. 254, 259 (S.D.N.Y. 1998); *Winkfield v. Bagley*, 66

Fed.Appx. 578, unpublished, 2003 WL 21259699 (6th Cir. May 28, 2003)(same).

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. In view of the foregoing, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED** as untimely.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY

United States District Judge